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21 *Incredible Pizza Franchise Group, LLC*

22 UNITED STATES DISTRICT COURT
23 CENTRAL DISTRICT OF CALIFORNIA
24 WESTERN DIVISION

25 JIPC Management, Inc.

26 Plaintiff,

27 v.

28 Incredible Pizza Co., Inc.; Incredible
Pizza Franchise Group, LLC;

Defendants.

Case No. CV08-04310 MMM (PLAx)

**DEFENDANTS' REPLY IN
SUPPORT OF MOTION IN LIMINE
NO. 7**

Pretrial Conference

Date: July 13, 2009

Time: 9:00 a.m.

Courtroom: Roybal 780

Judge: Hon. Margaret R. Morrow

1 In opposing Defendants' Motion in Limine No. 7, Plaintiff concedes that it will
2 "confine its evidence regarding the scope of recoverable damages and injunctive relief to
3 those arising from Defendants' activities directed to California and the surrounding
4 states." [Opposition to MIL No. 7 at 1-2] Based on Plaintiff's concession, which it
5 previously did not make when informed of Defendants' intent to file this Motion in
6 Limine, the Court should grant Motion in Limine No. 7 to the extent it seeks to exclude
7 evidence of harm or damages to Plaintiff outside of California and the surrounding states.

8 Plaintiff also opposes Motion in Limine No. 7 by suggesting that Defendants
9 are attempting "to relitigate [their] motion for summary judgment," and pointing to
10 the Court's June 25 Order, which narrowed the scope of certain geographic issues at
11 trial. Of course, Defendants did not have the benefit of the Court's June 25 Order
12 when they filed their motions in limine on June 22, 2009. The Court's Order is
13 consistent with Motion in Limine No. 7 because it finds (1) "JIPC's market penetration
14 does not extend to any state in which defendants currently operate, and [JIPC] is
15 therefore not entitled to injunctive relief precluding defendants from using the
16 'Incredible Pizza Company' mark in those states" [June 25 Order p. 27]; (2)
17 "[D]efendants' use of their marks in states in which they operate presently restaurants
18 has not caused JIPC actual damage" [Id. at 28]; and (3) "JIPC did not experience any
19 lost sales as a result of defendants' conduct" [Id. at 30].

20 Finally Plaintiff further opposes Motion in Limine No. 7 by contending that
21 "Defendants' motion is intended to insulate a new America's Incredible Pizza
22 Company store currently scheduled to open this summer in Phoenix, Arizona."
23 [Opposition to MIL No. 7 at 1] Plaintiff attempts to infer some kind of bad intent by
24 also adding that Defendants' removed reference to the Phoenix store from the
25 "Locations" page of its website. [Id. at FN 1] However, as Plaintiff is now aware, for
26 reasons wholly unrelated to this lawsuit, Defendants and their franchisees no longer
27 have any plans to open a store in Phoenix.
28

Based on the foregoing, Defendants respectfully request that the Court issue an order in limine excluding evidence of alleged harm or damages to Plaintiff outside of California and the surrounding states (Arizona, Nevada, and Oregon). For the Court's convenience, Defendants are aware of the following documents listed on the Joint Exhibit List that relate primarily to alleged harm or damages to Plaintiff outside of California and the surrounding states:

Description of Evidence	Found At	Why Plaintiff Seeks to Admit	Why They Should Be Excluded
"Examples of Expansion Efforts"	Exh. 68	To establish harm to alleged expansion effort allegedly caused by Defendants' use and franchising in other states	Legally insufficient to establish a "natural zone of expansion"
"Indiana Uniform Franchise Registration Application"	Exh. 150	Unknown	Defendants' activities in Indiana are irrelevant
"Springfield Business Journal article re 'Incredible Pizza Co. Targets \$500 Million in 10 Years'"	Exh. 153	To establish baseline for damages claim based on total revenues of IPC as opposed to amounts in California	Plaintiff concedes that it will "confine its evidence regarding the scope of recoverable damages and injunctive relief to those arising from Defendants' activities directed to California and the surrounding states."
"Photos of IPC Phoenix Store"	Exh. 185	To establish alleged harm in Arizona	Exhibit does not exist; IPC Phoenix will not open
"Video of IPC Phoenix Store"	Exh. 186	To establish alleged harm in Arizona	Exhibit does not exist; IPC Phoenix will not open

1	“Summary of	Exh. 228	To establish baseline	Plaintiff concedes that it
2	Amarillo’s		for damages claim	will “confine its evidence
3	Incredible Pizza Co.		based on total revenues	regarding the scope of
4	Revenues		of IPC as opposed to	recoverable damages and
5			amounts in California	injunctive relief to those
6				arising from Defendants’
7				activities directed to
8				California and the
9				surrounding states.”
10	“Summary of IPC	Doc. 206-2,	To establish baseline	Plaintiff concedes that it
11	Revenues”	Exhs. 229, 230	for damages claim	will “confine its evidence
12			based on total revenues	regarding the scope of
13			of IPC as opposed to	recoverable damages and
14			amounts in California	injunctive relief to those
15				arising from Defendants’
16				activities directed to
17				California and the
18				surrounding states.”
19	Various Incredible	Doc. 206-2,	To establish harm from	Irrelevant to the extent they
20	Pizza Company	Exhs. 265-281,	Defendants’	relate to Defendants’
21	Franchise	302-310	franchising activities	franchising activities
22	Agreements and		outside of California	outside of California and
23	Area Development		and the surrounding	the surrounding states.
24	Agreements		states	
25	IPC webpage	Opposition,	To establish alleged	IPC Phoenix will not open
26	promoting Phoenix	Exh. 1, not	harm in Arizona	
27	store	listed on Joint		
28		Exhibit List		
	Article publicizing	Opposition,	To establish alleged	IPC Phoenix will not open
	IPC Phoenix store	Exh. 2; not	harm in Arizona	
		listed on Joint		
		Exhibit List		

1
2 Dated: July 6, 2009

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21 LLC
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PROOF OF SERVICE

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STATE OF ARIZONA, COUNTY OF MARICOPA

I am employed in the County of Maricopa, State of Arizona. I am over the age of 18 and not a party to the within action. My business address is 16427 North Scottsdale Road, Suite 300, Scottsdale, Arizona 85254.

On July 6, 2009, I served the foregoing document described as **DEFENDANTS' REPLY IN SUPPORT OF MOTION IN LIMINE NO. 7** on the interested party in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

☐ BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Scottsdale, Arizona in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ BY PERSONAL SERVICE: I caused the above-mentioned document to be personally served to the offices of the addressee.

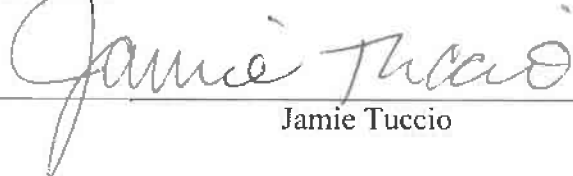
☐ BY FACSIMILE: I communicated such document via facsimile to the addressee as indicated on the attached service list.

☐ BY FEDERAL EXPRESS: I caused said document to be sent via Federal Express to the addressee as indicated on the attached service list.

☒ BY ELECTRONIC MAIL: I caused the above-referenced document to be served to the addressee on the attached service list.

Executed on July 6, 2009, at Scottsdale, Arizona.

X (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Jamie Tuccio

SERVICE LIST

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